IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.479 of 2007
DATE OF DECISION: December 07, 2007

Satish Kumar

.....PETITIONER

VERSUS

Raj Kumar and others

.....RESPONDENTS

CORAM: HON'BLE MR JUSTICE T.P.S.MANN

PRESENT: Mr Vijay Pal, Advocate
for the petitioner.

None for respondent No.1.

Mr Vinod Gupta, Advocate
for respondent No.2.

T.P.S .MANN, J.

The petitioner is aggrieved of the order passed by learned Motor Accident Claims Tribunal, Hisar on 6.1.2007, whereby the application filed by him for converting his petition under Section 163-A of the Motor Vehicles Act (hereinafter referred to as "the Act") into one under Section 166 of the Act was declined.

Initially, the claim petition was filed by the petitioner under Section 163-A of the Act for grant of compensation to the tune of Rs. six lacs, on account of injuries sustained by him in a motor vehicular accident. During its pendency, the petitioner filed an application seeking permission of the learned Tribunal to convert the same into one under Section 166 of the Act on the ground that his income was more than Rs.40,000/- per annum

and therefore, his case would not be covered by the provisions of Section 163-A of the Act. The application was opposed by the Insurance Company on the ground that once the petitioner had opted to file a petition under Section 163-A of the Act, he cannot go back and reopen the case.

Learned Tribunal while relying upon the observations of the Hon'ble Supreme Court in *Deepal Girishbhai Soni and Others* vs *United India Insurance Co. Ltd., Baroda*, (2004) Supreme Court Cases 385, rejected the prayer made by the petitioner holding that the amendment sought was not maintainable.

I have heard learned counsel for the parties.

During the recording of the evidence by the learned Tribunal, it has now come that the petitioner had been having an annual income of more than Rs.40,000/-. Under these circumstances, he would be dis-entitled to seek compensation under Section 163-A of the Act. He could get compensation only if his case falls under Section 166 of the Act.

As the amendment sought by the petitioner was necessary for arriving at a just and proper decision in the case, the prayer made on behalf of the petitioner ought to have been allowed by the learned Tribunal. The facts of *Deepal Girishbhai Soni and Others'* case (supra) are that the claim therein was sought under Sections 163-A and 166 of the Act and that too, simultaneously. It was held that remedy for payment of compensation under the aforementioned Sections being final and independent of each other. A claimant cannot pursue his remedies thereunder simultaneously and must opt/elect to go for either a proceeding under Section 163-A or under Section 166 of the Act. Moreover, in the said case, the proceedings before the learned Tribunal had already been concluded, whereas in the present case,

the proceedings are still pending before the learned Tribunal.

In view of the above, the present petition is allowed. The petitioner is permitted to convert his petition under Section 163-A into one under Section 166 of the Act. It is also directed that in case, learned Tribunal finally decides to grant the compensation to the petitioner and also the interest on the same, the interest part be ordered only from the date of passing of this order and not from the date of filing the initial petition under Section 163-A of he Act or the application for converting the petition under Section 163-A of the Act into one under Section 166 of the Act.

December 07, 2007 **T.P.S.MANN)**
Pds **JUDGE**